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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

17 Cr. 548 (JMF)

5 JOSHUA ADAM SCHULTE,

6 Defendant.

Trial

7 -----x

8 New York, N.Y.

9 July 8, 2022

9:00 a.m.

10 Before:

11 HON. JESSE M. FURMAN,

12 District Judge

13 -and a Jury-

14 APPEARANCES

15 DAMIAN WILLIAMS

16 United States Attorney for the  
17 Southern District of New York

BY: DAVID W. DENTON JR.

18 MICHAEL D. LOCKARD

Assistant United States Attorneys

19 JOSHUA A. SCHULTE, Defendant *Pro Se*

20 SABRINA P. SHROFF

21 DEBORAH A. COLSON

Standby Attorneys for Defendant

22 Also Present: Charlotte Cooper, Paralegal Specialist

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(Trial resumed; Jury not present)

THE COURT: Good morning. I hope everyone is well and well rested. My deputy has gone to check on the jury. Anything to discuss before they come from the government.

MR. DENTON: Just, your Honor, with respect to the laptop issue that we were discussing yesterday, the laptops are marked but part of the process of setting them up so what we have done is taken one and essentially covered up the classification sticker for it so that that's not visible so that way the jury will not see anything that has that marking on it other than what is on the exhibit that is in evidence.

THE COURT: All right.

Mr. Schulte, have you seen that and any issues there?

MR. SCHULTE: I haven't seen it yet, no.

THE COURT: Can you show it to Mr. Schulte?

MR. SCHULTE: So the only suggestion that I have is the yellow sticker on the top, if we just marked what the exhibit was and put the CD actually into the computer and just give it to them like that so they don't see the actual CD or anything but it is all loaded up on the computer for them. They don't have to put it in or anything.

THE COURT: Mr. Lockard?

MR. LOCKARD: I don't think we want to mark the laptop as an exhibit because then we lose the laptop.

THE COURT: Also, it didn't come in as an exhibit.

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1 MR. LOCKARD: It didn't come in as an exhibit.

2 THE COURT: Can I see the laptop and the exhibit? And  
3 does the jury need power cords for these things? Do they have  
4 power cords?

5 Have the parties compiled the physical exhibits that  
6 were admitted at trial?

7 MR. LOCKARD: We have.

8 THE COURT: So just describing this, the disk itself  
9 is the exhibit, it is marked "top secret" but, as noted, to the  
10 extent that it came into evidence that way that is the way it  
11 should go to the jury. The laptop, there is a post-it note  
12 taped over what I assume is similar marking and, otherwise, no  
13 visible sign of anything relating to classification. Given  
14 that, I think there is no prejudice and this is an acceptable  
15 way for it to go to the jury and I think we already discussed  
16 Government Exhibit 1, it should go as it came into evidence and  
17 there was no objection to any stickers that were on it at the  
18 time so that is the way it will go to the jury.

19 Anything else that we need to discuss?

20 MR. DENTON: Not from the government, your Honor.

21 THE COURT: Mr. Schulte?

22 MR. SCHULTE: No.

23 THE COURT: OK. Any issues with redactions to the  
24 transcript or are we good on that front?

25 MR. DENTON: No additional redactions, your Honor. I

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1 think we are still trying to make sure that we can implement,  
2 particularly the substitution that the Court approved with the  
3 court reporters, but that's an execution issue rather than a  
4 substantive one.

5 THE COURT: Well, let's try to make sure that that  
6 gets done expeditiously so that the transcripts are released  
7 publicly if they're not already.

8 I will find out what is going on with our jury and  
9 then we will get started.

10 (pause)

11 THE DEPUTY CLERK: Jury entering.

12 (Continued on next page)

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(Jury present)

THE COURT: You may be seated.

Good morning. Welcome back, ladies and gentlemen. I hope you had a good afternoon and evening. And, thank you for being here, yet again, on time.

As you know, the moment has come for me to give you your instructions as to the law. As you probably saw, I left a copy of the instructions for you on your chairs. You may follow along, as I will repeat in a moment. For the moment, do not turn ahead but, if you would like, you may turn to page 1 as I begin at this time.

Members of the jury, you have now heard all of the evidence in the case and the closing arguments. It is my duty at this point to instruct you as to the law. My instructions to you will be in three parts.

First, I will give you general instructions, for example, about your role as the jury, what you can and cannot consider in your deliberations and the burden of proof.

Second, I will describe the law that you must apply to the facts as you find them to be established by the evidence.

Finally, I will give you some instructions for your deliberations.

I am going to read my instructions to you. It is not my favorite way to communicate and not the most scintillating thing to listen to, but there is a need for precision and it is

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1 important that I get the words just right and so that is why I  
2 will be reading.

3 Because my instructions cover many points, I have  
4 given you a copy of my instructions to follow along. Please  
5 limit yourself to following along, that is, do not read ahead  
6 in the instructions. If you find it easier to listen and  
7 understand while you are following along with me, please, do  
8 so. If you would prefer, you can just listen and not follow  
9 along. Either way, you may take your copy of the instructions  
10 with you into the jury room so you can consult it if you want  
11 to reread any portion of the charge to facilitate your  
12 deliberations.

13 For now, listen carefully and try to concentrate on  
14 the substance of what I am saying. You should not single out  
15 any instruction as alone stating the law. Rather, you should  
16 consider my instructions as a whole when you retire to  
17 deliberate in the jury room.

18 You, the members of the jury, are the sole and  
19 exclusive judges of the facts. You must weigh and consider the  
20 evidence without regard to sympathy, prejudice --

21 [phone chime]

22 Somebody has a phone. Please make sure it is off.  
23 And that is as good a moment to say, as any, when you retire to  
24 deliberate, please, turn your phones off. Make sure they're  
25 not with you during breaks. You are obviously welcome to check

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1     them, but I think to ensure that your deliberations are  
2     uninterrupted, make sure your phones are off and away.

3             Continuing at the top of page 2:

4             You must weigh and consider the evidence without  
5     regard to sympathy, prejudice, or passion for or against any  
6     party. It is your duty to accept my instructions as to the law  
7     and to apply them to the facts as you determine them. If  
8     either party has stated a legal principle differently from any  
9     that I state to you in my instructions, it is my instructions  
10    that you must follow.

11            In reaching your verdict, you must remember that all  
12    parties stand equal before a jury in the Courts of the United  
13    States. The fact that the government is a party and the  
14    prosecution is brought in the name of the United States does  
15    not entitle the government or its witnesses to any greater  
16    consideration than that accorded to any other party. By the  
17    same token, you must give it no less deference. The government  
18    and the defendant, Joshua Schulte, stand on equal footing  
19    before you.

20            It would be improper for you to consider, in reaching  
21    your decision as to whether the government sustained its burden  
22    of proof, any personal feelings you may have about the  
23    defendant's race, national origin, religious beliefs, sex, or  
24    age. All persons are entitled to the same presumption of  
25    innocence and the government has the same burden of proof with

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1 respect to all persons.

2 A criminal defendant has a constitutional right under  
3 the Sixth Amendment to the United States Constitution to  
4 represent himself. The defendant's decision to exercise that  
5 right and represent himself has no bearing on whether he is  
6 guilty or not guilty and it must not affect your consideration  
7 of the case. You are not to draw any inferences from the  
8 defendant's decision to exercise his right to represent  
9 himself.

10 The personalities and the conduct during trial of both  
11 counsel and Mr. Schulte are not, in any way, at issue. If you  
12 formed opinions of any kind about the personalities or conduct  
13 during trial of any of the lawyers in the case or Mr. Schulte,  
14 favorable or unfavorable, whether you approved or disapproved  
15 of their behavior, those opinions should not enter into your  
16 deliberations.

17 In addition, remember that it is the duty of each side  
18 to object when the other side offers testimony or other  
19 evidence that the objector believes is not properly admissible.  
20 Therefore, you should draw no inference from the fact that  
21 there was an objection to any testimony or evidence. Nor  
22 should you draw any inference related to the weight or  
23 importance of any testimony or evidence from the fact that I  
24 sustained or overruled an objection. Simply because I have  
25 permitted certain testimony or evidence to be introduced does



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1 not mean that I have decided on its importance or significance.  
2 That is for you to decide.

3 The defendant has pleaded not guilty to the charges  
4 against him. As a result of that plea of not guilty, the  
5 burden is on the government to prove guilt beyond a reasonable  
6 doubt. This burden never shifts to a defendant for the simple  
7 reason that the law never imposes upon a defendant in a  
8 criminal case the burden or duty of testifying, or calling any  
9 witness or locating or producing any evidence.

10 Furthermore, the law presumes the defendant to be  
11 innocent of the charges against him. The presumption of  
12 innocence was in his favor when the trial began, continued in  
13 his favor throughout the entire trial, remains with him even as  
14 I speak to you now, and persists in his favor during the course  
15 of your deliberations in the jury room unless and until the  
16 government proves, beyond a reasonable doubt, that he committed  
17 one of the charged crimes.

18 The question that naturally arises is, What is a  
19 reasonable doubt? A reasonable doubt is a doubt based on your  
20 reason, your judgment, your experience, and your common sense.  
21 It is a doubt that a reasonable person has after carefully  
22 weighing all the evidence. It is a doubt founded in reason and  
23 arises out of the evidence in the case or lack of evidence. A  
24 reasonable doubt is not caprice or whim, is not speculation or  
25 suspicion.

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1 Proof beyond a reasonable doubt does not mean proof  
2 beyond all possible doubt. It is practically impossible for a  
3 person to be absolutely and completely convinced of any  
4 disputed fact that, by its very nature, cannot be proved with  
5 mathematical certainty. The government's burden is to  
6 establish guilt beyond a reasonable doubt, not all possible  
7 doubt.

8 If, after a fair and impartial consideration of all  
9 the evidence you can candidly and honestly say that you are not  
10 satisfied with the guilt of the defendant, that you do not have  
11 an abiding belief of the defendant's guilt -- in other words, if  
12 you have such a doubt as would reasonably cause a prudent  
13 person to hesitate in acting in matters of importance in his or  
14 her own affairs -- then you have a reasonable doubt and in that  
15 circumstance it is your duty to acquit.

16 On the other hand, if after a fair and impartial  
17 consideration of all the evidence you can candidly and honestly  
18 say that you do have an abiding belief of the defendant's  
19 guilt, such a belief as a prudent person would be willing to  
20 act upon in important matters in the personal affairs of his or  
21 her own life, then you have no reasonable doubt and in that  
22 circumstance it is your duty to convict.

23 There are two types of evidence that you may properly  
24 use in deciding whether the defendant is guilty or not guilty  
25 of the crimes with which he is charged. One type of evidence

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1 is called direct evidence. Direct evidence of a fact in issue  
2 is presented when a witness testifies to that fact based on  
3 what he or she personally saw, heard, or otherwise observed  
4 through the five senses. The second type of evidence is  
5 circumstantial evidence. Circumstantial evidence is evidence  
6 that tends to prove a disputed fact indirectly by proof of  
7 other facts.

8           There is a simple example of circumstantial evidence  
9 that is often used in this court house. Assume that when you  
10 came into the court house this morning the sun was shining and  
11 it was a nice day outside -- as it actually was. Also  
12 assume -- as is actually the case -- that the courtroom shades  
13 were drawn and you could not look outside. Assume further that  
14 as you were sitting here someone walked in with an umbrella  
15 that was dripping wet and then, a few moments later, someone  
16 else walked in with a raincoat that was also dripping wet.

17           Now, because you could not look outside the courtroom  
18 and you could not see whether it was raining, you would have no  
19 direct evidence of that fact. But, on the combination of facts  
20 that I have asked you to assume, it would be reasonable and  
21 logical for you to conclude that it was raining.

22           That is all there is to circumstantial evidence. You  
23 infer on the base of your reason, experience and common sense  
24 from one established fact the existence or nonexistence of some  
25 other fact.

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1           The matter of drawing inferences from facts in  
2 evidence is not a matter of guesswork or speculation. An  
3 inference is a logical factual conclusion that you might  
4 reasonably draw from other facts that have been proved. It is  
5 for you, and you alone, to decide what inferences you will  
6 draw.

7           Many material facts, such as a person's state of mind,  
8 are not easily proved by direct evidence. Usually, such facts  
9 are established by circumstantial evidence and the reasonable  
10 inferences you draw. Circumstantial evidence may be given as  
11 much weight as direct evidence. The law makes no distinction  
12 between direct and circumstantial evidence. The law simply  
13 requires that before convicting a defendant, you must be  
14 satisfied of the defendant's guilt beyond a reasonable doubt  
15 based on all the evidence in the case.

16           What, then, is the evidence in the case? The evidence  
17 in this case is, one, the sworn testimony of the witnesses;  
18 two, the exhibits received into evidence; and three, any  
19 stipulations made by the parties. Anything else is not  
20 evidence. For example, the questions posed to a witness are  
21 not evidence, it is the witness' answers that are evidence, not  
22 to the questions. I remind you also that if you understand  
23 Spanish, you may not rely on any testimony that was given in  
24 Spanish. The English translation of any testimony that was  
25 give in Spanish is the evidence you may consider during your

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1 deliberations.

2 In addition, exhibits marked for identification but  
3 not admitted by me are not evidence, nor are materials brought  
4 forth only to refresh a witness' recollection. Moreover,  
5 testimony that has been stricken or excluded by me is not  
6 evidence and may not be considered by you in rendering your  
7 verdict.

8 Along these lines we have, as you know, among the  
9 exhibits received in evidence, some documents that are redacted  
10 and some documents where words were substituted over the  
11 redaction. Redacted means that part of the document was taken  
12 or blacked out. You are to concern yourself only with the part  
13 of the document that has been admitted into evidence including  
14 any substitution. You should not consider any possible reason  
15 why the other part of it has been deleted or blacked out, or  
16 why there might be a substitution.

17 Arguments by the lawyers and the defendant are also  
18 not evidence. What you heard during the opening statements and  
19 summations is merely intended to help you understand the  
20 evidence and reach your verdict. If your recollection of the  
21 facts differs from the parties' statements, you should rely on  
22 your recollection. If a party made a statement during his or  
23 her opening or summation and you find that there is no evidence  
24 to support the statement, you should disregard the statement.

25 In that regard, let me remind you: Because the

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1 defendant decided to act as his own lawyer you heard him speak  
2 at various times during the trial including in opening and  
3 closing arguments. I want to remind you that when the  
4 defendant spoke during those parts of the trial, he was acting  
5 as a lawyer in the case, not as a witness, and thus his words  
6 are not evidence. The only evidence in this case is the  
7 testimony of witnesses under oath and exhibits admitted into  
8 evidence.

9 Finally, any statements that I may have made during  
10 the trial or during these instructions do not constitute  
11 evidence. At times I may have admonished a witness or directed  
12 a witness to be responsive to questions or to keep his or her  
13 voice up. At times, I may have asked a question myself. Any  
14 questions that I asked or instructions that I gave were  
15 intended only to clarify the presentation of evidence and to  
16 bring out something that I thought might be unclear. You  
17 should draw no inference or conclusion of any kind, favorable  
18 or unfavorable, with respect to any witness or any party in the  
19 case by reason of any comment, question, or instruction of  
20 mine. The rulings I have made during the trial and these  
21 instructions are no indication of my views of what your  
22 decision should be, nor should you infer that I have any views  
23 as to the credibility of any witness, as to the weight of the  
24 evidence, or as to how you should decide any issue that is  
25 before you. That is entirely your role.

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1           How do you evaluate credibility or believability of  
2 the witnesses? The answer is that you use your common sense.  
3 There is no magic formula by which you can evaluate testimony.  
4 You may use the same tests here that you use in everyday life  
5 when evaluating statements made by others to you. You may ask  
6 yourselves: Did the witness impresses as open, honest, and  
7 candid? How responsive was the witness to the questions asked  
8 on direct examination and on cross-examination?

9           If you find that a witness intentionally told a  
10 falsehood that is always a matter of importance you should  
11 weigh carefully. On the other hand, a witness may be  
12 inaccurate, contradictory, or even untruthful in some respects  
13 and entirely believable and truthful in other respects. It is  
14 for you to determine whether such inconsistencies are  
15 significant or consequential, and whether to accept or reject  
16 all of the testimony of any witness or to exempt or reject only  
17 portions.

18           You are not required to accept testimony even though  
19 the testimony is uncontradicted and the witness' testimony is  
20 not challenged. You may reject it because of the witness'  
21 bearing or demeanor, or because of the inherent improbability  
22 of the testimony, or for other reasons sufficient for you to  
23 conclude that the testimony is not worthy of belief.

24           In evaluating the credibility of the witnesses, you  
25 should take into account any evidence that a witness may

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1 benefit in some way from the outcome of the case. Such an  
2 interest in the outcome creates a motive to testify falsely and  
3 may sway a witness to testify in a way that advances his or her  
4 own interests. Therefore, if you find that any witness whose  
5 testimony you are considering may have an interest in the  
6 outcome of this trial, you should bear that factor in mind when  
7 evaluating the credibility of his or her testimony and decide  
8 whether to accept it with great care.

9 Keep in mind, though, that it does not automatically  
10 follow that testimony given by an interested witness is to be  
11 disbelieved. There are many people who, no matter what their  
12 interest in the outcome of the case may be, would not testify  
13 falsely. It is for you to decide, based on your own  
14 perceptions and common sense to what extent, if at all, the  
15 witness' interest has affected his or her testimony.

16 You have heard testimony from law enforcement  
17 witnesses and witnesses who are current or former employees of  
18 the Central Intelligence Agency -- or CIA -- and Federal Bureau  
19 of Investigation -- or FBI. The fact that a witness may be  
20 employed as a law enforcement official or government employee  
21 does not mean that his or her testimony is necessarily  
22 deserving of more or less consideration or greater or lesser  
23 weight than that of an ordinary witness. It is your decision,  
24 after reviewing all the evidence, whether to accept the  
25 testimony of any law enforcement witness or government



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1 witnesses as it is with every other type of witness, and to  
2 give that testimony the weight you find it deserves.

3 I have allowed some of the CIA witnesses to testify  
4 either using a made up name -- pseudonym -- or just their first  
5 names. That is because disclosure of these witnesses' true or  
6 full name could potentially compromise their work at the CIA.  
7 You should weigh the testimony of these witnesses just as you  
8 would any other witness and not weigh it differently because  
9 they testified using a pseudonym or used the first name only.  
10 Moreover, you should not consider the fact that I allowed these  
11 witnesses to testify in this way as an expression of my opinion  
12 as to any of the facts of this case. Again, it is your job,  
13 and your job alone, to decide the facts of this case.

14 You have heard testimony from expert witnesses. As I  
15 previously explained, an expert witness is someone who, by  
16 education or experience, has acquired learning or experience in  
17 a specialized area of knowledge. Such a witness is permitted  
18 to express his or her opinions on matters about which he or she  
19 has specialized knowledge and training. The parties may  
20 present expert testimony to you on the theory that someone who  
21 is experienced in the field can assist you in understanding the  
22 evidence or in reaching an independent decision on the facts.

23 Your role in judging credibility applies to experts as  
24 well as other witnesses. In weighing an expert's opinion, you  
25 may consider the expert's qualifications, education, and

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1 reasons for testifying, as well as all of the other  
2 considerations that ordinarily apply including all the other  
3 evidence in the case. If you find the opinion of an expert is  
4 based on sufficient data, education, and experience, and the  
5 other evidence does not give you a reason to doubt his or her  
6 conclusions, you would be justified in placing reliance on his  
7 or her testimony. However, you should not accept witness  
8 testimony simply because the witness is an expert. The  
9 determination of the facts in this case rests solely with you.

10 You have heard testimony from one witness, Carlos  
11 Betances, who testified that he pleaded guilty to criminal  
12 conduct and is now cooperating with the government.

13 Experience will tell you that the government sometimes  
14 must rely on the testimony of so-called cooperating witnesses.  
15 The government must take its witnesses as it finds them and  
16 sometimes must use such testimony in a criminal prosecution  
17 because, otherwise, it would be difficult or impossible to  
18 detect and prosecute wrongdoers. For these very reasons, the  
19 law allows the use of testimony from cooperating witnesses.  
20 Indeed, under federal law the testimony of a cooperating  
21 witness may be enough in itself for a conviction if the jury  
22 believes that the testimony establishes guilt beyond a  
23 reasonable doubt.

24 You may not draw any conclusions or inferences of any  
25 kind about the guilt of the defendant on trial from the fact

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1 that Mr. Betances pleaded guilty to other charges. The  
2 decision of that witness to plead guilty was a personal  
3 decision that witness made about his own guilt. It may not be  
4 used by you in any way as evidence against or unfavorable to  
5 the defendant.

6 Additionally, because of the interest a cooperator may  
7 have in testifying, you should scrutinize his testimony with  
8 special care and caution. You may consider the fact that a  
9 witness is a cooperator is bearing upon his credibility. Like  
10 the testimony of any other witness, accomplice witness  
11 testimony or cooperator testimony should be given such weight  
12 as it deserves in light of the facts and circumstances before  
13 you, taking into account the witness' demeanor and candor, the  
14 strength and accuracy of the witness' recollection, his  
15 background, and the extent to which testimony is or is not  
16 corroborated by other evidence in the case. You may consider  
17 whether a cooperating witness has an interest in the outcome of  
18 the case and, if so, whether that interest has affected his  
19 testimony.

20 You heard testimony about an agreement between the  
21 government and the cooperating witness -- that should just be  
22 singular, witness. I should caution you it is not concern of  
23 yours why the government made an agreement with a particular  
24 witness. You may, however, consider the effect, if any, that  
25 the existence or terms of the agreement have on the witness'

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1 credibility. A witness who hopes to obtain leniency may have a  
2 motive to testify as he believes the government wishes, or he  
3 may feel that it is in his interest to incriminate others. As  
4 with any witness, your responsibility is to determine whether  
5 any such motive or intent has influenced the witness' testimony  
6 and whether the witness has told the truth, in whole or in  
7 part.

8 In sum, in evaluating the testimony of a cooperating  
9 witness, you should ask yourselves the following questions:  
10 Would the cooperating witness -- that should say -- benefit  
11 more by lying or by telling the truth? Was any part of his  
12 testimony potentially made up because he believed or hoped that  
13 he would receive favorable treatment from the government by  
14 testifying falsely or as he believed the government wanted? Or  
15 did he believe that his interests would be best served by  
16 testifying truthfully? If you believe that the witness was  
17 motivated by hopes of personal gain, was the motivation one  
18 that would cause him to lie? Or was it one that would cause  
19 him to tell the truth? Did this motivation color his  
20 testimony? It does not follow, however, that simply because a  
21 person has admitted to participating in one or more crimes, he  
22 is incapable of giving a truthful version of what happened.

23 If you think that the testimony was false, you should  
24 reject it. However, if after a cautious and careful  
25 examination of a cooperating witness' testimony you are

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1 satisfied that the witness told the truth, you may accept his  
2 testimony as credible and act upon it accordingly.

3 As with any witness, let me emphasize that the issue  
4 of credibility need not be decided in an all-or-nothing  
5 fashion. If you find that a witness has been untruthful in  
6 some respect you may, but are not required to, reject the  
7 witness' testimony in its entirety. Even if you find that a  
8 witness testified falsely in one part, you may still accept his  
9 testimony in other parts. How much of a witness' testimony to  
10 accept, if any, is a determination entirely for you, the jury.

11 You have heard evidence during the trial that  
12 witnesses discussed the facts of the case and their testimony  
13 with the lawyers before the witnesses appeared in court.  
14 Although you may consider this fact when you are evaluating a  
15 witness' credibility, it is common for a witness to meet with  
16 lawyers before testifying so that the witness can be aware of  
17 the subjects he or she will be questioned about, focus on the  
18 subjects, and have the opportunity to review relevant exhibits  
19 before being questioned about them. In fact, it would be  
20 unusual for a lawyer to call a witness without such  
21 consultation. As always, the weight you give to the fact or  
22 the nature of these issues and what inferences you draw from  
23 them are matters completely within your discretion.

24 There are people whose names you have heard during the  
25 course of the trial but who did not appear here to testify. I

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1 instruct you that each party had an equal opportunity, or lack  
2 of opportunity, to call any of these witnesses. Therefore, you  
3 should not draw any inferences or reach any conclusions as to  
4 what they would have testified to had they been called. Their  
5 absence should not affect your judgment in any way. You  
6 should, however, remember my instruction that the law does not  
7 impose on a defendant in a criminal case the burden or duty of  
8 calling any witness or producing any evidence. The burden of  
9 proof remains at all times with the government.

10 The fact that one party called more witnesses or  
11 introduced more evidence does not mean that you should  
12 necessarily find the facts in favor of the side offering the  
13 most witnesses and the most evidence. By the same token, you  
14 do not have to accept the testimony of any witness who has not  
15 been contradicted or impeached if you find the witness to be  
16 not credible. After examining all the evidence, you may decide  
17 that the party calling the most witnesses has not persuaded you  
18 because you do not believe its witnesses, or because you do  
19 believe the fewer witnesses called by the other side.

20 Again, you should also keep in mind that the burden of  
21 proof is always on the government. The defendant is not  
22 required to call any witnesses or offer any evidence since he  
23 is presumed to be innocent. On the other hand, the government  
24 is not required to prove each element of the offense by any  
25 particular number of witnesses. The testimony of a single

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1 witness may be enough to convince you beyond a reasonable doubt  
2 of the existence of the elements of the charged offenses -- if  
3 you believe that the witness has truthfully and accurately  
4 related what he or she has told you. Testimony of a single  
5 witness may also be enough to convince you that reasonable  
6 doubt exists, in which case you must find the defendant not  
7 guilty.

8           You have heard evidence that the defendant was in  
9 custody at one point. You may consider this evidence as  
10 evidence of the defendant's whereabouts at these points in  
11 time. However, you may not consider the fact that the  
12 defendant was in custody as evidence that he is of bad  
13 character or has a propensity to commit crime.

14           You have heard testimony that the defendant made  
15 certain statements outside the courtroom in which the defendant  
16 claimed that his conduct was consistent with innocence and not  
17 with guilt. The government claims that these statements, which  
18 the defendant exonerated or exculpated himself, are false. If  
19 you find that the defendant gave a false statement in order to  
20 divert suspicion from himself you may, but are not required to,  
21 infer that the defendant believed that he was guilty.

22           In many circumstances it is reasonable to infer that  
23 an innocent person would not find it necessary to invent or  
24 fabricate an explanation or statement tending to establish his  
25 or her innocence. On the other hand, there may be reasons

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1 fully consistent with innocence that would cause a person to  
2 give a false statement showing their innocence. You may not  
3 rely on this evidence alone to support a finding of guilt.  
4 Whether a defendant's statement does or does not point to  
5 consciousness of guilt and the significance, if any, to be  
6 attached to any such evidence are matters for you, the jury, to  
7 decide.

8 Stipulations were entered into relating to various  
9 facts in this case. A stipulation, as I previously told you,  
10 is an agreement between parties as to what certain facts were  
11 or what the testimony would be if certain people testified  
12 before you. Stipulations are the same for your purposes as the  
13 presentation of live testimony. You should consider the weight  
14 to be given such evidence just as you would any other evidence.

15 If certain testimony or evidence was received for a  
16 limited purpose, you must follow the limiting instructions I  
17 have given.

18 The government has presented exhibits in the form of  
19 charts and summaries. As you recall, some of the charts and  
20 summaries were not admitted into evidence but were shown to you  
21 as aids to make the other evidence more meaningful and to help  
22 you in considering that evidence. Others were admitted into  
23 evidence as exhibits. I admitted these charts and summaries in  
24 place of or in addition to the underlying documents that they  
25 represented in order to save time and avoid unnecessary



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1 inconvenience. They are no better than the testimony or the  
2 documents upon which they are based. Therefore, you are to  
3 give no greater consideration to these charts or summaries than  
4 you would give to the evidence upon which they are based. It  
5 is for you to decide whether they correctly present the  
6 information contained in the testimony and in the exhibits on  
7 which they were based.

8           Some video recordings have been admitted in evidence.  
9 I instruct you that the creation of these recordings was  
10 entirely lawful and that these recordings were properly  
11 admitted in evidence. Of course, it is for you to decide what  
12 weight, if any, to give this evidence.

13           The government has been permitted to give you  
14 transcripts containing the government's interpretation of what  
15 can be heard on some of the video recordings that have been  
16 received as evidence. Those were given to you as an aids or  
17 guide to assist you in watching recordings. As I have told  
18 you, they are not in and of themselves evidence, except for the  
19 few spots in which the transcript reflects a substitution for  
20 something that was redacted or removed from the recording, in  
21 which case you should treat the substitution and not the  
22 recording as the evidence. You, alone, should make your own  
23 interpretation of what appears on the recordings based on what  
24 you heard. If you think you heard something differently than  
25 appeared on the transcript, then what you heard is controlling.

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1           You have heard reference to certain investigative  
2 techniques that were used or not used by the government in this  
3 case. There is no legal requirement that the government prove  
4 its case through any particular means. While you are to  
5 carefully consider the evidence adduced by the government, you  
6 are not to speculate as to why the government used the  
7 techniques it did or why it did not use other techniques.

8           You may not draw any inference, favorable or  
9 unfavorable, toward the government or the defendant, from the  
10 fact that any person was not named as a defendant in this case,  
11 and you may not speculate as to the reasons why other people  
12 are not on trial before you now. Those matters are wholly  
13 outside your concern and have no bearing on your function as  
14 jurors in deciding the case before you.

15           You have heard testimony about evidence that was  
16 seized and about various searches including searches of  
17 electronic devices and electronic service providers. Evidence  
18 obtained from those searches was properly admitted in this case  
19 and may be properly considered by you. Indeed, such searches  
20 are entirely appropriate law enforcement actions. You also  
21 heard testimony about evidence that was labeled attorney-client  
22 privilege. As I instructed you at the time, that evidence was  
23 also properly admitted.

24           Whether you approve or disapprove of how the evidence  
25 was obtained should not enter into your deliberations because I

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1 instruct you that the government's use of the evidence is  
2 lawful. You must, therefore, regardless of your personal  
3 opinions, give this evidence full consideration along with all  
4 the other evidence in the case in determining whether the  
5 government has proved the defendant's guilt beyond a reasonable  
6 doubt. Once again, however, it is for you to decide what  
7 weight, if any, to give this evidence.

8           The defendant did not testify. Under our  
9 Constitution, as I have told you, a defendant is presumed  
10 innocent and has no obligation to testify or to present any  
11 other evidence because, as I have told you, it is the  
12 government's burden to prove the defendant guilt beyond a  
13 reasonable doubt. That burden remains on the government  
14 throughout the entire trial and never shifts to the defendant.  
15 A defendant is never required to prove that he is innocent.

16           You may not attach any significance to the fact that  
17 the defendant did not testify. No adverse inference against  
18 the defendant may be drawn by you because the defendant did not  
19 take the witness stand. You may not consider this in any way  
20 in your deliberations in the jury room.

21           That concludes my introductory instructions, let me  
22 now turn to the charges.

23           Mr. Schulte is formally charged in an indictment. As  
24 I instructed you at the outset of this case, the indictment is  
25 a charge or accusation, it is not evidence. The indictment --

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1 a copy of which you will have in the jury room during your  
2 deliberations -- contains nine charges or counts against the  
3 defendant. Each count accuses the defendant of committing a  
4 different crime. You must, as a matter of law, consider each  
5 count and you must return a separate verdict for each count in  
6 which the defendant is charged. Your verdict on one count  
7 should not control your decision as to any other count.

8 Counts One, Two, Five, Six, Seven and Eight charge the  
9 defendant with various crimes relating to the alleged misuse of  
10 computers and theft of information from the CIA in the spring  
11 of 2016 and subsequent disclosure of such information to the  
12 WikiLeaks organization.

13 Count One charges the defendant with illegal gathering  
14 of national defense information, or "NDI." Specifically, it  
15 charges that on or about April 20th, 2016, the defendant,  
16 without authorization, copied backup files of certain  
17 electronic databases -- what I will refer to as the backup  
18 files -- housed on a classified computer system maintained by  
19 the CIA, namely DevLAN.

20 Count Two charges the defendant with illegal  
21 transmission of unlawfully possessed documents, writings, or  
22 notes containing NDI or "national defense information."  
23 Specifically, it charges that between April and May 2016, the  
24 defendant, without authorization, retained copies of the backup  
25 files and communicated them to a third-party not authorized to

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1 receive them, the organization WikiLeaks.

2 Count Five charges the defendant with unauthorized  
3 access to a computer to obtain classified information.  
4 Specifically, it charges that between April 18 and April 20,  
5 2016, the defendant accessed a computer without authorization  
6 and exceeded his authorized access to obtain the backup files  
7 and subsequently transmitted them to WikiLeaks without  
8 authorization.

9 Count Six charges the defendant with unauthorized  
10 access to a computer to obtain information from a department or  
11 agency of the United States. Specifically, it charges that on  
12 or about April 20th, 2016, the defendant accessed a computer  
13 without authorization or in excess of his authorized access and  
14 copied the backup files.

15 Count Seven charges the defendant with causing  
16 transmission of a harmful computer command, specifically it  
17 charges that on or about April 20th, 2016, the defendant  
18 transmitted commands on DevLAN to manipulate the state of the  
19 Confluence virtual server on DevLAN.

20 Count Eight charges the defendant with causing  
21 transmission of a harmful computer command. Specifically, it  
22 charges that on or about April 20th, 2016, the defendant  
23 transmitted commands on DevLAN to delete log files of activity  
24 on DevLAN.

25 Counts Three and Four charge the defendant with crimes

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1 relating to the unlawful disclosure or attempted disclosure of,  
2 again, NDI or national defense information, while he was in the  
3 Metropolitan Correctional Center, or "MCC," the federal jail.

4 Count Three charges that in or about September 2018,  
5 the defendant had unauthorized possession of documents,  
6 writings, or notes containing NDI related to the internal  
7 computer networks of the CIA and willfully transmitted them to  
8 a third-party not authorized to receive them.

9 Count Four charges that between July and September  
10 2018, the defendant had unauthorized possession of documents,  
11 writings, and notes containing NDI related to tradecraft  
12 techniques, operations, and intelligence-gathering tools used  
13 by the CIA and attempted to transmit them to a third-party or  
14 parties not authorized to receive them.

15 Finally, Count Nine charges the defendant with  
16 obstruction of justice. Specifically, it charges that between  
17 March and June 2017 the defendant made certain false statements  
18 to agents of the FBI during their investigation of the  
19 WikiLeaks leak.

20 I will explain each count in turn and it is the more  
21 detailed instructions that you should follow and control. I  
22 will also remind you that you must consider each count  
23 separately and return a separate verdict on each count.

24 I will begin with Count One which charges the  
25 defendant with illegal gathering of NDI -- which just to remind

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1 you again, is national defense information.

2 In order to find the defendant guilty of Count One,  
3 the government must prove the following three elements beyond a  
4 reasonable doubt.

5 First, that on or about April 20th, 2016, the  
6 defendant copied, took, made, or obtained a sketch, photograph,  
7 photographic negative, blueprint plan, map, model, instrument,  
8 appliance, document, writing, or note;

9 Second, that the information in that material was  
10 connected to the national defense; and

11 Third, that the defendant acted with the purpose of  
12 obtaining information respecting the national defense and with  
13 the intent or with reason to believe that the information was  
14 to be used to the injury of the United States or used to the  
15 advantage of the foreign country.

16 Let me elaborate on each of these three elements.

17 The first element that the government must prove  
18 beyond a reasonable doubt for purpose of Count One is that the  
19 defendant copied, took, made or obtained a sketch, photograph,  
20 photographic negative, blueprint, map, model, instrument,  
21 appliance, document, writing, or note. The indictment  
22 specifically charges that on or about April 20th, 2016, the  
23 defendant copied, without authorization, the backup files  
24 housed on the classified DevLAN computer system maintained by  
25 the CIA.

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1           If you find that the government has proved beyond a  
2 reasonable doubt that the defendant copied the backup files,  
3 you should next consider the second element.

4           The second element that the government must prove  
5 beyond a reasonable doubt for the purpose of Count One is that  
6 the material the defendant is accused of taking is national  
7 defense information, or "NDI," which is to say that it is  
8 directly and reasonably connected with the national defense.

9           The term "national defense" is a broad term that  
10 refers to United States military establishments, intelligence,  
11 and to all related activities of national preparedness.

12           To qualify as NDI, the government must prove that the  
13 material is closely held by the United States government. In  
14 determining whether material is closely held, you may consider  
15 whether the material at issue was already in the public domain;  
16 information typically cannot qualify as NDI if it is already in  
17 the public domain. But where information is in the public  
18 domain, the fact that the information comes from the United  
19 States government, or the fact that the United States  
20 government considers the information to be accurate or  
21 inaccurate may, itself, be NDI.

22           Thus, where information has been made public by the  
23 United States government itself, it is not closely held and  
24 cannot be NDI. Similarly, where information has been made  
25 public by someone other than the United States government, and



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1 the United States government confirms that the information came  
2 from the United States government, it is not closely held and  
3 cannot be NDI. But, the United States government's assessment  
4 of the reliability or unreliability of publicly available  
5 information, as opposed to the information itself, can itself  
6 be closely held information relating to the national defense.  
7 In such instances, it is the confirmation of the accuracy or  
8 inaccuracy of material in the public domain and not the public  
9 domain material itself that can qualify as information relating  
10 to the national defense. The distinction between a  
11 confirmation of information relating to the national defense  
12 already in the public domain that can be NDI and one that  
13 cannot depends on whether the confirmation itself could  
14 potentially harm the national security.

15 All of that said, if the particular information at  
16 issue has been so widely circulated and is so generally  
17 believed to be true or to have come from the United States  
18 government that confirmation that it came from the United  
19 States government would add nothing to its weight, it is not  
20 closely held even if there has been no official confirmation by  
21 the United States government.

22 In determining whether material is closely held, you  
23 may consider whether it has been classified by appropriate  
24 authorities and whether it remained classified on the dates  
25 pertinent to the indictment. Although you may consider whether

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1 information has been classified in determining whether it has  
2 been closely held, I caution or remind you that the mere fact  
3 that information is classified does not mean that the  
4 information qualifies as NDI.

5 In deciding this issue, you examine the information  
6 and also consider the testimony of witnesses who testified as  
7 to its content and significance and do describe the purpose and  
8 the use to which the information could be put.

9 Whether the information is connected with the national  
10 defense is a question of fact that you, the jury, must  
11 determine following the instructions that I have just given you  
12 about what those terms mean.

13 The third element that the government must prove  
14 beyond a reasonable doubt for the purpose of Count One is that  
15 the defendant acted for the purpose of obtaining the  
16 information respecting the national defense and with the intent  
17 or with reason to believe that the information were to be used  
18 to the injury of the United States or used to the advantage of  
19 a foreign country.

20 In considering whether or not the defendant had the  
21 intent or reason to believe that the information would be used  
22 to the injury of the United States or to provide an advantage  
23 to a foreign country, you may consider the nature of the  
24 documents or information involved. I emphasize that to convict  
25 the defendant of Count One you must find that the defendant had

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1 the intent or reason to believe that the information would be  
2 used to the injury of the United States, not just that it could  
3 be so used. The government does not have to prove that the  
4 intent was both to injure the United States and to provide an  
5 advantage to a foreign country. The statute reads in the  
6 alternative. Further, the country to whose advantage the  
7 information would be used need not necessarily be an enemy of  
8 the United States. A statute does not distinguish between  
9 friend and foe.

10 If you find beyond a reasonable doubt, therefore, that  
11 the defendant acted for the purpose of obtaining information  
12 respecting the national defense and acted with the intent or  
13 with reason to believe that the information would be used to  
14 injure the United States or to provide an advantage to a  
15 foreign country, the third element of the offense is satisfied.

16 Let me turn then to Counts Two and Three, each of  
17 which charges the defendant with illegal transmission of  
18 certain unlawfully possessed NDI. Although I will explain them  
19 together, I remind you that you must consider them separately  
20 and return a separate verdict on each count.

21 In order to find the defendant guilty of Count Two or  
22 Count Three, the defendant -- the government, excuse me -- must  
23 prove the following three elements beyond a reasonable doubt:

24 First, that on or about the dates charged in the  
25 indictment, the defendant had unauthorized possession of,

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1 access to, or control over a document, writing, plan,  
2 instrument, or note;

3 Second, that the information in that material was  
4 connected to the national defense; and

5 Third, that on or about the dates in the indictment,  
6 the defendant willfully communicated, delivered or transmitted,  
7 or caused to be communicated, delivered, or transmitted, the  
8 document, writing, plan, instrument, or note to a person who is  
9 not entitled to receive it.

10 Again, let me elaborate on each of these three  
11 elements.

12 The first element that the government must prove  
13 beyond a reasonable doubt for purposes of Counts Two and Three  
14 is that on or about the dates charged in the count at issue,  
15 the defendant had unauthorized possession of, control over, or  
16 access to the documents writings, plans, instruments, or notes  
17 in question.

18 In the case of Count Two, the indictment charges that  
19 between April and May 2016, the defendant, without  
20 authorization, retained copy -- excuse me, retained documents,  
21 writings, plans, instruments, and notes in the form of copies  
22 of the backup files, as I have defined that term earlier.

23 In the case of Count Three, the indictment charges  
24 that in or about September 2018, the defendant, without  
25 authorization, possessed documents, writings, and notes

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1 pertaining to internal computer networks of the CIA including  
2 DevLAN. In particular, Count Three is based on the following  
3 passage on page 3 of Government Exhibit 812 and the following  
4 passage alone:

5 "In reality, two groups -- EDG and COG -- and at least  
6 400 people, have access. They don't include COG who is  
7 connected to our DevLAN through Hickok, an intermediary network  
8 that connected both COG and EDG. There is absolutely no reason  
9 they shouldn't have known this connection exists. Step one is  
10 narrowing down the possible suspects and to completely  
11 disregard an entire group and half the suspects as reckless.  
12 All they needed to do was talk to one person on infrastructure  
13 branch or through any technical description/diagram of the  
14 network."

15 For purposes of this first element, the word  
16 "possession" is a commonly used and commonly understood word.  
17 Basically it means the act of having or holding property or the  
18 detention of property in one's power or command. It may mean  
19 actual physical possession or constructive possession. A  
20 person has constructive possession of something if he knows  
21 where it is and can get it any time he wants or otherwise can  
22 exercise control over it. A person has unauthorized possession  
23 of something if he is not entitled to have it.

24 The second element that the government must prove  
25 beyond a reasonable doubt for purposes of Counts Two and Three

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1 is that the documents, writings, plans, instruments, or notes  
2 at issue are NDI, which is to say that they are related to the  
3 national defense of the United States. I have already  
4 instructed you about this element in connection with Count One  
5 and you should follow that instruction with respect to Counts  
6 Two and Three as well.

7 In deciding whether the second element is satisfied  
8 with respect to Count Three, however, you may consider only the  
9 passage quoted above from page 3 of Government Exhibit 812.

10 The third element that the government must prove  
11 beyond a reasonable doubt for purpose of Counts Two and Three  
12 is that on or about the dates charged in the Count at issue,  
13 the defendant willfully communicated, delivered, or  
14 transmitted, or caused to be communicated, delivered, or  
15 transmitted, the document, writing, plan, instrument, or note  
16 to a person who is not entitled to receive it. "Person" in  
17 this context includes not only an individual but also a company  
18 or entity.

19 In the case of Count Two, the indictment charges that  
20 between April and May 2016 the defendant caused the backup  
21 files to be communicated, delivered, and transmitted to  
22 WikiLeaks.

23 In the case of Count Three, the indictment charges  
24 that in or about September 2018, the defendant transmitted the  
25 documents, writings and notes at issue to a third-party that

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1 the United States had not authorized to receive that  
2 information.

3 An act is done willfully if it is done voluntarily and  
4 intentionally with a specific intent to do something the law  
5 forbids, that is to say with a bad purpose either to disobey or  
6 disregard the law. In determining whether a defendant has  
7 acted willfully, however, it is not necessary for the  
8 government to establish that the defendant was aware of the  
9 specific law or rule that his conduct may be violating.

10 Additionally, the government need not prove that the  
11 defendant actually delivered the information himself, it is  
12 enough that he proved caused the acts to be done.

13 In deciding whether a person was entitled to receive  
14 information you may consider all the evidence introduced at  
15 trial, including any evidence concerning the classification  
16 status of the document or testimony concerning limitations on  
17 access to the document.

18 Let me turn then to Count Four, which charges the  
19 defendant with attempted illegal transmission of unlawfully  
20 possessed NDI. The indictment charges that between July and  
21 October 2018, the defendant, without authorization, possessed  
22 document, writings, and notes regarding tradecraft techniques,  
23 operations, and particular intelligence-gathering tools used by  
24 the CIA, and that he attempted to transmit such documents,  
25 writings, and notes to third-parties whom the United States had

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1 not authorized to receive that information. In particular,  
2 Count Four is based on the following passages in Government's  
3 Exhibits 801 and 809 and the following passages alone.

4 Government Exhibit 801, page 3:

5 "Which brings me to my next point -- do you know what  
6 my speciality was at the CIA? Do you know what I did for fun?  
7 Data hiding and crypto. I designed and wrote software to  
8 conceal data in a custom-designed file system contained well  
9 the drive slackspace or hidden partitions. I disguised data.  
10 I split data across file and file stills to conceal the  
11 crypto-analysis tools could never detect random or  
12 pseudo-random data indicative of potential crypto. I designed  
13 and wrote my own crypto -- how better to fool buffoons like  
14 forensic examiners at the FBI than to have custom software that  
15 doesn't fit into their two-week class where they become  
16 forensic 'experts.'"

17 Government Exhibit 809, page 8, there is a  
18 substitution: "[tool from vendor report] - Bartender for  
19 [redacted]" -- and then substitution -- "[vendor]."

20 Government Exhibit 809, page 10: "Additionally" --  
21 again a substitution -- "[Tool described in vendor report] is  
22 in fact Bartender. A CIA toolset for" -- substitution --  
23 [operators] to configure for [redacted] deployment."

24 Government 809, page 11: Substitution --  
25 "[@vendor] discovered [tool] in 2016, which is really the CIA's



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1 Bartender tool suite. Bartender was written to [redacted]  
2 deploy against various targets. The source code is available  
3 in the Vault 7 release."

4 For Count Four you should follow the instructions I  
5 previously gave you with respect to Counts Two and Three. To  
6 be clear, in deciding whether the second element concerning  
7 national defense information or NDI is satisfied, you may  
8 consider only the foregoing passages.

9 Count Four differs from Counts Two and Three, however,  
10 in one important way. For purposes of Count Four, you may find  
11 the defendant guilty if you find that the government has proved  
12 beyond a reasonable doubt that the defendant attempted to  
13 illegally transmit NDI. To prove the charge of attempted  
14 illegal transmission of NDI, the government must prove each of  
15 the following two elements beyond a reasonable doubt:

16 First, the defendant intended to commit the crime of  
17 illegally transmitting NDI; and

18 Second, the defendant did some act that was a  
19 substantial step in an effort to bring about or accomplish the  
20 crime.

21 Mere intention to commit a specific crime does not  
22 amount to an attempted crime. In order to convict the  
23 defendant of an attempt to illegally transmit NDI, you must  
24 find, beyond a reasonable doubt, that he intended to commit the  
25 crime charged and that he took some action which was a

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1 substantial step toward the commission of that crime.

2 In determining whether the defendant's actions  
3 amounted to a substantial step toward the commission of the  
4 crime, it is necessary to distinguish between mere preparation  
5 on the one hand and the actual doing of the criminal deed on  
6 the other. Mere preparation, which may consist of planning the  
7 offense or devising, obtaining, or arranging a means for its  
8 commission is not an attempt, although some preparations may  
9 amount to an attempt. The acts of a person who intends to  
10 commit a crime will constitute an attempt when the acts  
11 themselves clearly indicate an attempt to commit the crime and  
12 the acts are a substantial step in a course of conduct planned  
13 to culminate in the commission of the crime.

14 Let me turn then to Count Five, which charges the  
15 defendant with unauthorized access to a computer to obtain  
16 classified information:

17 In order to find the defendant guilty of Count Five,  
18 the government must prove the following four elements beyond a  
19 reasonable doubt:

20 First, that between April 18th and April 20th, 2016,  
21 the defendant either accessed a computer without authorization  
22 or accessed a computer with authorization but exceeded his  
23 authority in accessing the information in question;

24 Second, that the defendant knowingly accessed that  
25 computer;

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1 Third, that the defendant obtained information  
2 protected against unauthorized disclosure for reasons of  
3 national defense or foreign relations and that the defendant  
4 had reason to believe that the information could be used to the  
5 injury of the United States or to the advantage of a foreign  
6 nation.

7 (Continued on next page)

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Charge

1           THE COURT: And fourth, that the defendant willfully  
2       communicated, delivered, transmitted, or caused to be  
3       communicated, delivered or transmitted, or attempted to  
4       communicate, deliver or transmit or cause to be communicated  
5       delivered or transmitted, the information to a person who was  
6       not entitled to receive it.

7           Now let me elaborate on each of these four elements.

8           The first element that the government must prove  
9       beyond a reasonable doubt for purpose of Count Five is that the  
10      defendant either (1) accessed a computer without authorization  
11      or (2) accessed a computer with authorization but exceeded his  
12      authority in accessing the information in question. The  
13      indictment charges that, between April 18 and April 20, 2016,  
14      the defendant accessed a computer without authorization or  
15      exceeded his authorized access on a computer to obtain the  
16      backup files.

17          In this case, the indictment charges both that the  
18      defendant did not have authorized access to the computer at  
19      issue and that the defendant, while authorized to access the  
20      computer, exceeded his authority in accessing the information  
21      in question. You need not find both to be true in order to  
22      find this element satisfied beyond a reasonable doubt.

23          To prove that the defendant exceeded his authority,  
24      the government must prove beyond a reasonable doubt that the  
25      defendant had access to the computer and used that access to

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Charge

1 obtain or alter information in the computer that the defendant  
2 was not entitled to obtain or alter. Note that an individual  
3 does not exceed authorized access when he accesses a computer  
4 to obtain information he is authorized to access -- even if he  
5 obtains the information for an improper purpose.

6 The second element that the government must prove  
7 beyond a reasonable doubt for purpose of Count Five is that the  
8 defendant acted knowingly in accessing the computer without  
9 authorization or outside the scope of his authority.

10 "Knowingly" means to act voluntarily and deliberately,  
11 rather than mistakenly or inadvertently. The question of  
12 whether a person acted knowingly is a question of fact for you  
13 to determine, like any other fact question. The question  
14 involves one's state of mind.

15 Direct proof of knowledge is almost never available.  
16 It would be a rare case when it could be shown that a person  
17 wrote or stated that, as of a given time in the past, he  
18 committed an act with knowledge. Such proof is not required.  
19 The ultimate fact of knowledge, though subjective, may be  
20 established by circumstantial evidence, based upon a person's  
21 outward manifestation, his words, his conduct, his acts and all  
22 the surrounding circumstances disclosed by the evidence and the  
23 rational or logical inferences that may be drawn from them.

24 The government can also meet its burden of showing  
25 that a defendant had actual knowledge of the accessing of a

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Charge

1 computer without authorization if it establishes beyond a  
2 reasonable doubt that he acted with deliberate disregard of  
3 whether he was so authorized, or with a conscious purpose to  
4 avoid learning the nature and scope of his authorization.  
5 Alternatively, the government may satisfy its burden of proving  
6 knowledge by establishing beyond a reasonable doubt that the  
7 defendant acted with an awareness of the high probability that  
8 he was acting without authorization, unless the defendant  
9 actually believed that he had authorization to access a  
10 computer in the manner described in the indictment. This  
11 guilty knowledge, however, cannot be established by  
12 demonstrating that the defendant was merely negligent or  
13 foolish.

14 The third element that the government must prove  
15 beyond a reasonable doubt for purpose of Count Five is that the  
16 defendant obtained information protected against unauthorized  
17 disclosure for reasons of national defense or foreign relations  
18 with reason to believe such information could be used against  
19 the interests of the United States or to the advantage of a  
20 foreign nation.

21 The United States may determine that information  
22 requires protection against unauthorized disclosure for reasons  
23 of national defense or foreign relations either by executive  
24 order or by statute.

25 This element requires the government to prove that, at

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1 the time the defendant obtained the protected information, he  
2 had reason to believe that the information could be used  
3 against the interests of the United States or to the advantage  
4 of a foreign nation.

5 The fourth element that the government must prove  
6 beyond a reasonable doubt for purpose of Count Five is that the  
7 defendant willfully communicated, delivered, transmitted, or  
8 caused to be communicated, delivered or transmitted, or  
9 attempted to communicate, deliver or transmit the protected  
10 information obtained to a person who was not entitled to  
11 receive it. I have already explained what "willfully" means  
12 and you should apply those instructions here as well.

13 Count Six charges the defendant with unauthorized  
14 access to a computer to obtain information from a department or  
15 agency of the United States.

16 In order to find the defendant guilty of Count Six,  
17 the government must prove the following three elements beyond a  
18 reasonable doubt:

19 First, that, on or about April 20, 2016, the defendant  
20 either accessed a computer without authorization or accessed a  
21 computer with authorization, but exceeded his authority in  
22 accessing the information in question;

23 Second, that the defendant acted intentionally; and

24 Third, that the defendant obtained information from a  
25 department or agency of the United States.

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1           Once again, I will elaborate on each of these three  
2 elements.

3           The first element that the government must prove  
4 beyond a reasonable doubt for purpose of Count Six is that the  
5 defendant either (1) accessed a computer without authorization  
6 or (2) accessed a computer with authorization, but he exceeded  
7 his authority in accessing the information in question. The  
8 indictment charges that, on or about April 20, 2016, the  
9 defendant accessed a computer without authorization and  
10 exceeded his authorized access on a computer to copy the backup  
11 files.

12           I have already instructed you about this element in  
13 connection with Count Five, and you should follow that  
14 instruction with respect to Count Six as well.

15           The second element that the government must prove  
16 beyond a reasonable doubt for purpose of Count Six is that the  
17 defendant acted intentionally in accessing the computer without  
18 authorization or outside the scope of his authority.

19           "Intentionally" means to act deliberately and  
20 purposefully. That is, the defendant's acts must have been the  
21 product of the defendant's conscious objective rather than the  
22 product of a mistake or accident.

23           The question of whether a person acted intentionally  
24 is a question of fact for you to determine, like any other fact  
25 question. The question involves one's state of mind. Direct



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1 proof of intent is almost never available. It would be a rare  
2 case when it could be shown that a person wrote or stated that,  
3 as of a given time in the past, he committed an act  
4 intentionally. Such proof is not required. The ultimate fact  
5 of intent, though subjective, may be established by  
6 circumstantial evidence, based upon a person's outward  
7 manifestations, his words, his conduct, his acts and all the  
8 surrounding circumstances disclosed by the evidence and the  
9 rational or logical inferences that may be drawn from them.

10 The third element that the government must prove  
11 beyond a reasonable doubt for purpose of Count Six is that the  
12 defendant obtained the information from any department or  
13 agency of the United States. The CIA is a department or agency  
14 of the United States. But it is for you to determine if the  
15 government has proved beyond a reasonable doubt that, without  
16 authorization, the defendant obtained information contained in  
17 a computer of the CIA.

18 Let me turn, then, to Counts Seven and Eight, each of  
19 which charges the defendant with causing the transmission of a  
20 harmful computer program, information, code or command. Once  
21 again, although I will explain these two counts together, I  
22 remind you that you must consider them separately and return a  
23 separate verdict on each count.

24 In order to find the defendant guilty of Count Seven  
25 or Count Eight, the government must prove the following four

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1 elements beyond a reasonable doubt:

2 First, that, on or about April 20, 2016, the defendant  
3 knowingly caused the unauthorized transmission of a program,  
4 information, code or command to a protected computer;

5 Second, that the defendant caused the transmission of  
6 the program, information, code or command with the intent to  
7 damage or deny services to a computer or computer system;

8 Third, that the defendant thereby caused damage; and

9 Fourth, that the defendant's actions resulted in that  
10 damage to a computer system used by or for an entity of the  
11 United States government in furtherance of the administration  
12 of justice, national defense, or national security.

13 Now let me elaborate on each of these four elements.

14 The first element that the government must prove  
15 beyond a reasonable doubt for purpose of Counts Seven and Eight  
16 is that the defendant knowingly caused the unauthorized  
17 transmission of a program, information, code or command to a  
18 protected computer.

19 In the case of Count Seven, the indictment charges  
20 that the defendant transmitted commands on DevLAN to manipulate  
21 the state of the Confluence virtual server on DevLAN, including  
22 by (1) reverting the virtual server to a "snapshot," or past  
23 version of the system as it appeared on April 16, 2016; (2)  
24 restoring the system to a snapshot the defendant created on  
25 April 20, 2016; and (3) subsequently deleting that snapshot,

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1 thus erasing the records of his activities on the system.

2 In the case of Count Eight, the indictment charges  
3 that the defendant transmitted commands on DevLAN to delete log  
4 files of activity on DevLAN.

5 This element requires that the government prove that  
6 the defendant's transmission of the computer program,  
7 information, code or command was unauthorized. Under the  
8 statute, this means that the transmission occurred without the  
9 permission of the person or entity who owns or is responsible  
10 for the computer receiving the transmitted program,  
11 information, code or command.

12 This element also requires that the government prove  
13 that the defendant transmitted the program, information, code  
14 or command to a "protected computer." As relevant to this  
15 case, this means that the government must prove that the  
16 computer was exclusively for the use of the United States  
17 government.

18 Finally, this element requires that the government  
19 prove that the defendant transmitted the program, information,  
20 code or command knowingly. I previously instructed you about  
21 the meaning of "knowingly," and you should apply those  
22 instructions here as well.

23 The second element that the government must prove  
24 beyond a reasonable doubt for purpose of Counts Seven and Eight  
25 is that the defendant caused the transmission of the program,

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1 information, code or command at issue with the intent to cause  
2 damage, as I will define that term for you.

3 To act with "intent" means to act intentionally --  
4 that is, deliberately and purposefully. In other words, the  
5 defendant's acts must have been the product of the defendant's  
6 conscious objective, rather than the product of a mistake or  
7 accident.

8 The third element that the government must prove  
9 beyond a reasonable doubt for purpose of Counts Seven and Eight  
10 is that by transmitting the program, information, code or  
11 command at issue, the defendant caused damage. "damage" means  
12 any impairment to the integrity or availability of data, a  
13 program, a system, or information.

14 The fourth element that the government must prove  
15 beyond a reasonable doubt for purpose of Counts Seven and Eight  
16 is that the defendant's actions disrupted a computer system  
17 used by or for any government agency in furtherance of the  
18 administration of justice, national defense, or national  
19 security.

20 Finally, Count Nine charges the defendant with  
21 obstruction of justice.

22 In order to find the defendant guilty of Count Nine,  
23 the government must prove the following three elements beyond a  
24 reasonable doubt:

25 First, that, between March and June of 2017, there was

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1 a proceeding pending before a federal court or grand jury;

2 Second, that the defendant knew of the proceeding; and

3 Third, that the defendant corruptly acted to obstruct  
4 or impede, or endeavored to obstruct or impede, the proceeding.

5 Let me elaborate on each of these three elements.

6 The first element that the government must prove  
7 beyond a reasonable doubt for purpose of Count Nine is that,  
8 between March and June of 2017, there was a proceeding pending  
9 before a federal grand jury or a federal court. A grand jury  
10 proceeding commences, at a minimum, when a grand jury subpoena  
11 is issued in connection with a grand jury investigation. The  
12 grand jurors need not have heard testimony or taken a role in  
13 the decision to issue a subpoena.

14 The second element that the government must prove  
15 beyond a reasonable doubt for purpose of Count Nine is that the  
16 defendant knew that such a proceeding was in progress when he  
17 corruptly acted to obstruct or impede the proceeding (as I will  
18 explain those terms to you in a moment).

19 I previously instructed you about the defendant's  
20 knowledge in connection with Count Five, and you should follow  
21 those instructions with respect to Count Nine as well.

22 The third element that the government must prove  
23 beyond a reasonable doubt for purpose of Count Nine is that the  
24 defendant did corruptly obstruct or impede, or corruptly  
25 endeavor to obstruct or impede, the proceeding at issue.

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1           The word "corruptly" means simply having the improper  
2 intent or purpose of obstructing justice. To establish that  
3 the defendant acted with corrupt intent, the government also  
4 must prove that there existed a "nexus," or connection, between  
5 the defendant's conduct and the grand jury proceeding. That  
6 is, the government must prove some relationship in time,  
7 causation, or logic between the defendant's action and the  
8 grand jury proceeding so that the defendant's conduct may be  
9 said to have the natural and probable effect of interfering  
10 with that proceeding. Where the discretionary actions of a  
11 third party are required to obstruct the grand jury proceeding,  
12 the nexus requirement is satisfied if it was foreseeable to the  
13 defendant that the third party would act on the defendant's  
14 conduct in such a way as to obstruct the proceeding.

15           The term "endeavor" is designed to reach all conduct  
16 that is aimed at influencing, intimidating, or impeding the  
17 conduct of the proceeding. Success of the endeavor is not an  
18 element of the crime. Thus, it is sufficient to satisfy this  
19 element if you find that the defendant knowingly acted in in a  
20 way that obstructed or had the natural and probable effect of  
21 obstructing justice from being duly administered.

22           Here, the indictment alleges that the defendant  
23 corruptly obstructed or impeded, or corruptly endeavored to  
24 obstruct or impede, a grand jury proceeding by making certain  
25 statements to the FBI. In particular, the indictment charges

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1 that the defendant made the following false or misleading  
2 statements to Special Agents of the FBI:

3 1. He denied having any involvement in unlawfully  
4 disclosing the backup files;

5 2. He stated that he had not kept a copy of an email  
6 he sent to the office of inspector general containing false  
7 allegations of security issues at the CIA;

8 3. He denied having any classified materials in his  
9 apartment;

10 4. He denied ever taking information from the CIA and  
11 transferring it to an unclassified network;

12 5. He denied ever making DevLAN vulnerable to the  
13 theft of data;

14 6. He denied housing information from the CIA on his  
15 home computer; and

16 7. He denied ever removing any classified information  
17 from the CIA and taking it home.

18 The government need not prove that the statements to  
19 the FBI were actually false or misleading if it otherwise  
20 proves beyond a reasonable doubt that the defendant gave  
21 answers in a corrupt endeavor to influence, obstruct, or impede  
22 the grand jury investigation by giving such statements to the  
23 FBI.

24 That said, false or misleading statements alone do not  
25 provide a basis for an obstruction of justice conviction unless

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1 the statements had the natural and probable effect of impeding  
2 the due administration of justice. Thus, where the allegation  
3 is that the defendant endeavored to influence, obstruct, or  
4 impede the grand jury's investigation by making false or  
5 misleading statements to the FBI, the government must prove  
6 beyond a reasonable doubt that the defendant knowingly gave  
7 false or misleading answers in his statements to the FBI and  
8 that he knew that those false statements were likely to  
9 obstruct the grand jury proceeding. It is not enough for the  
10 government to prove that the defendant had the impression that  
11 statements he made to the FBI would be conveyed to the grand  
12 jury; the government must prove beyond a reasonable doubt that  
13 the defendant knew that his conduct was likely to obstruct the  
14 proceeding -- for instance, by proving that the defendant knew  
15 that it was likely that his allegedly false or misleading  
16 statements made to the FBI would be conveyed to the grand jury.

17 I remind you that, to find the defendant guilty on  
18 Count Nine, the government must prove beyond a reasonable doubt  
19 that the defendant knew that a grand jury proceeding was in  
20 progress when he corruptly acted to obstruct or impede the  
21 proceeding. Unless and until the defendant knew there was a  
22 grand jury proceeding in progress, he could not, by definition,  
23 have acted corruptly to obstruct or impede, or corruptly  
24 endeavored to obstruct or impede, the proceeding. For that  
25 reason, I instruct you that you may not find this element of



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1 Count Nine satisfied based on the defendant's conduct,  
2 including any statement he may have made, before he had  
3 knowledge of an ongoing grand jury proceeding.

4 Finally, you need not find that a corrupt intent was  
5 the only purpose for the defendant's actions, so long as you  
6 find that he acted, at least in part, with that improper  
7 purpose. You may consider all the evidence and surrounding  
8 circumstances in determining whether the defendant acted  
9 corruptly.

10 In addition to all the elements of each of the charges  
11 that I have just described for you, for three of the counts --  
12 specifically, counts three, four, and nine -- you must also  
13 decide whether any act in furtherance of the crime charged  
14 occurred within the Southern District of New York. (you do not  
15 need to consider this issue, which is called venue, for  
16 purposes of counts one, two, five, six, seven, or eight. The  
17 government and the defendant have agreed to venue here on those  
18 counts, even though the conduct involved occurred in Virginia.)

19 The Southern District of New York includes, among  
20 other places, Manhattan. The government need not prove that  
21 the crimes charged in counts three, four, and nine were  
22 committed in this district or that the defendant himself was  
23 present here. It is sufficient to satisfy this element if any  
24 act in furtherance of the crimes charged in the count you are  
25 considering occurred in the Southern District of New York.

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1 I should note that on this issue -- and this issue  
2 alone -- the government need not prove venue beyond a  
3 reasonable doubt, but only by a mere preponderance of the  
4 evidence. Thus, the government has satisfied its venue  
5 obligations if you conclude that it is more likely than not  
6 that any act in furtherance of the crime charged in the count  
7 you are considering occurred in the Southern District and that  
8 it was reasonably foreseeable to the defendant that the act  
9 would take place in the Southern District of New York. If you  
10 find that the government has failed to prove this venue  
11 requirement with respect to any of counts three, four, and  
12 nine, then you must acquit the defendant on that count.

13 Proof of motive is not a necessary element of the  
14 crimes with which the defendant is charged. Proof of motive  
15 does not establish guilt. Nor does the lack of proof of motive  
16 establish that a defendant is not guilty. If the government  
17 has proved the defendant's guilt beyond a reasonable doubt, it  
18 is immaterial what the motive for the crime or crimes may be,  
19 or whether any motive has been shown at all. The presence or  
20 absence of motive is, however, a circumstance that you may  
21 consider as bearing on the defendant's intent.

22 It does not matter if the evidence you heard at trial  
23 indicates that a particular act occurred on a different date.  
24 The law requires only a substantial similarity between the  
25 dates alleged in the indictment and the dates established by

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1 the evidence.

2 In a few minutes, you are going to go into the jury  
3 room and begin your deliberations. During your deliberations,  
4 please continue to adhere to the safety protocols that we have  
5 used throughout the trial, including social distancing and  
6 masking. We have taken those precautions, on the advice of our  
7 medical experts, to ensure that everyone remains safe and  
8 healthy during trials. In addition, people have different  
9 levels of anxiety and risk tolerance when it comes to COVID-19.  
10 By adhering to the protocols, you not only ensure that everyone  
11 remains safe and healthy, but also respect the fact that your  
12 fellow jurors may or may not have the same level of comfort  
13 with the current situation that you have.

14 After you retire to begin your deliberations, your  
15 first task will be to select a foreperson. The foreperson has  
16 no greater voice or authority than any other juror but is the  
17 person who will communicate with me when questions arise and  
18 when you have reached a verdict and who will be asked in open  
19 court to pass your completed verdict form to me. Notes should  
20 be signed by the foreperson and should include the date and  
21 time they were sent. They should also be as clear and precise  
22 as possible. Any notes from the jury will become part of the  
23 record in this case. So please be as clear and specific as you  
24 can be in any notes that you send. Do not tell me or anyone  
25 else how the jury stands on any issue until after a unanimous

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1 verdict is reached.

2 All of the exhibits will be given to you near the  
3 start of deliberations. The bulk of the documentary evidence  
4 will be provided to you in electronic form, in files which can  
5 be pulled up on a screen in the jury room. Government Exhibits  
6 1 and 1203-28 will be provided on separate laptops and cannot  
7 be pulled up on the screen in the jury room. In addition, you  
8 will also be provided with a list of all the exhibits that were  
9 received into evidence. When you retire to deliberate, my  
10 staff will provide you with information on how to access this  
11 evidence in the jury room.

12 If you prefer to view any evidence here in the  
13 courtroom or if you want any of the testimony submitted to you  
14 or read back to you, you may also request that. Keep in mind  
15 that if you ask for testimony, however, the court reporter must  
16 search through her notes, the parties must agree on what  
17 portions of testimony may be called for, and if they disagree,  
18 I must resolve those disagreements. That can be a  
19 time-consuming process. So please try to be as specific as you  
20 possibly can in requesting portions of the testimony, if you  
21 do.

22 Again, your requests for testimony -- in fact, any  
23 communication with the Court -- should be made to me in  
24 writing, signed by your foreperson, with the date and time, and  
25 given to one of the court security officers.

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1           If any one of you took notes during the course of the  
2 trial, you should not show your notes to, or discuss your notes  
3 with, any other jurors during your deliberations. Any notes  
4 you have taken are to be used solely to assist you. The fact  
5 that a particular juror has taken notes entitles that juror's  
6 views to no greater weight than those of any other juror.  
7 Finally, your notes are not to substitute for your recollection  
8 of the evidence in the case. If, during your deliberations,  
9 you have any doubt as to any of the testimony, you may -- as I  
10 just told you -- request that the official trial transcript  
11 that has been made of these proceedings be submitted or read  
12 back to you.

13           All of us, no matter how hard we try, tend to look at  
14 others and weigh what they have to say through the lens of our  
15 own experience and background. We each have a tendency to  
16 stereotype others and make assumptions about them. Often, we  
17 see life and evaluate evidence through a clouded filter that  
18 tends to favor those like ourselves. You must do the best you  
19 can to put aside such stereotypes, for all litigants and  
20 witnesses are entitled to a level playing field.

21           Indeed, under your oath as jurors, you are not to be  
22 swayed by bias or sympathy. You are to be guided solely by the  
23 evidence in this case, and as you sift through the evidence,  
24 the crucial question that you must ask yourselves for each  
25 count is: Has the government proved each element beyond a

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1 reasonable doubt?

2 It is for you and you alone to decide whether the  
3 government has proved that the defendant is guilty of the  
4 crimes charged, solely on the basis of the evidence and subject  
5 to the law as I have instructed you.

6 It must be clear to you that once you let prejudice,  
7 bias, or sympathy interfere with your thinking, there is a risk  
8 that you will not arrive at a true and just verdict.

9 If you have a reasonable doubt as to the defendant's  
10 guilt with respect to a particular count, then you must render  
11 a verdict of not guilty on that particular count. On the other  
12 hand, if you should find that the government has met its burden  
13 of proving the guilt of the defendant beyond a reasonable doubt  
14 with respect to a particular count, then you should not  
15 hesitate because of sympathy or any other reason to render a  
16 verdict of guilty on that count.

17 I also caution you that, under your oath as jurors,  
18 you cannot allow to enter into your deliberations any  
19 consideration of the punishment that may be imposed upon the  
20 defendant if he is convicted. The duty of imposing a sentence  
21 in the event of conviction rests exclusively with the Court,  
22 and the issue of punishment may not affect your deliberations  
23 as to whether the government has proved the defendant's guilt  
24 beyond a reasonable doubt.

25 The most important part of this case, members of the

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1 jury, is the part that you as jurors are now about to play as  
2 you deliberate on the issues of fact. I know you(L) try the  
3 issues that have been presented to you according to the oath  
4 that you have taken as jurors. In that oath you promised that  
5 you would well and truly try the issues joined in this case and  
6 a true verdict render.

7 As you deliberate, please listen to the opinions of  
8 your fellow jurors, and ask for an opportunity to express your  
9 own views. Every juror should be heard. No one juror should  
10 hold the center stage in the jury room, and no one juror should  
11 control or monopolize the deliberations. If, after listening  
12 to your fellow jurors, and if, after stating your own view, you  
13 become convinced that your view is wrong, do not hesitate  
14 because of stubbornness or pride to change your view. On the  
15 other hand, do not surrender your honest convictions and  
16 beliefs solely because of the opinions of your fellow jurors or  
17 because you are outnumbered.

18 Your verdict must be unanimous. If at any time you  
19 are not in agreement, you are instructed that you are not to  
20 reveal the standing of the jurors -- that is, the split of the  
21 vote -- to anyone, including me, at any time during your  
22 deliberations.

23 We have prepared a verdict form for you to use in  
24 recording your decisions, a copy of which is attached to these  
25 instructions. Do not write on your individual copies of the

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1 verdict form. My staff will give the official verdict form to  
2 juror No. 1, who should give it to the foreperson after the  
3 foreperson has been selected.

4 You should draw no inference from the questions on the  
5 verdict form as to what your verdict should be. The questions  
6 are not to be taken as any indication that I have any opinion  
7 as to how they should be answered.

8 After you have reached a verdict, the foreperson  
9 should fill in the verdict form and note the date and time, and  
10 you should all sign the verdict form. The foreperson should  
11 then give a note -- not the verdict form itself -- to the court  
12 security officer outside your door stating that you have  
13 reached a verdict. Do not specify what the verdict is in your  
14 note. Instead, the foreperson should retain the verdict form  
15 and hand it to me in open court when I ask for it.

16 I will stress again that each of you must be in  
17 agreement with the verdict that is announced in court. Once  
18 your verdict is announced in open court and officially  
19 recorded, it cannot ordinarily be revoked.

20 Finally, I say this not because I think it is  
21 necessary but because it is the custom in this courthouse to  
22 say it: You should treat each other with courtesy and respect  
23 during your deliberations.

24 All litigants stand equal in this room. All litigants  
25 stand equal before the bar of justice. All litigants stand



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1 equal before you. Your duty is to decide between these parties  
2 fairly and impartially and to see that justice is done.

3 Under your oath as jurors, you are not to be swayed by  
4 sympathy or prejudice. You should be guided solely by the  
5 evidence presented during the trial and the law as I gave it to  
6 you, without regard to the consequences of your decision. You  
7 have been chosen to try the issues of fact and reach a verdict  
8 on the basis of the evidence or lack of evidence. If you let  
9 sympathy or prejudice interfere with your clear thinking, there  
10 is a risk that you will not arrive at a just verdict. You must  
11 make a fair and impartial decision so that you will arrive at  
12 the just verdict.

13 Members of the jury, I ask your patience for a few  
14 moments longer. It is necessary for me to spend a few moments  
15 with the parties and the court reporter at sidebar. I will ask  
16 you to remain patiently in the jury box, without speaking to  
17 each other, and we will return in just a moment to submit the  
18 case to you.

19 Thank you.

20 (At sidebar)

21 THE COURT: All right. Any objections to the  
22 instructions as delivered?

23 From the government.

24 All prior objections are obviously preserved.

25 MR. DENTON: No, your Honor.

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1 THE COURT: Mr. Schulte.

2 MR. SCHULTE: Just for the record, renew the  
3 objections I made during the jury charge.

4 THE COURT: As stated, all those are preserved.

5 Very good. Return to your seats, and I'll excuse the  
6 alternates and submit the case to the jury.

7 (In open court)

8 THE COURT: All right. Thank you for your patience,  
9 ladies and gentlemen.

10 So, this is the moment where I advise two of you that  
11 you're actually alternate jurors and unless we lose a juror  
12 during deliberations, you will not be called upon to  
13 deliberate, at least at this time. That is juror Nos. 13 and  
14 14. Now, I don't know if this is welcome or unwelcome news,  
15 but you are both alternates, and for that reason, in a moment  
16 I'm going to let you go. But I want to stress that you're not  
17 excused at this time from jury service. That is because it is  
18 possible that during deliberations one of the other 12 jurors  
19 may be unavailable to continue, and in that case, you may be  
20 called upon to join and deliberate with them. And for that  
21 reason, all of the instructions that I have given you to date  
22 continue to apply until the jury reaches a verdict; that is to  
23 say, do not discuss the case and even though you will not be  
24 deliberating for the moment at least, you should not discuss  
25 the case with anyone in any way, shape or form. You should not

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1 communicate about the case. You should do not do any research  
2 about the case, and you should continue to keep an open mind.

3 We will contact you in the event that the jury does  
4 reach a verdict to advise you of that fact and that you are at  
5 that time formally excused, at which time the restrictions that  
6 I just mentioned will no longer's apply to you.

7 Again, I don't know if telling you that you're  
8 alternates is welcome or unwelcome news, but I want to assure  
9 you that you've played a critical role in this process. As you  
10 saw, we lost two jurors during the course of this trial, so  
11 having alternates is a very important and critical part of the  
12 process to ensure that, once we start a trial, we can get it to  
13 its completion. And as I said earlier, it may be that you're  
14 called upon to serve and to deliberate. So for that reason,  
15 you're still playing a necessary and important part. So let me  
16 thank you on behalf of the parties, on behalf of the Court, on  
17 behalf of the justice system for the role that you have played.

18 Again, let me remind you that you are not formally  
19 excused, so all the restrictions do continue to apply, and we  
20 will contact you as soon as that changes, if that changes. And  
21 with that, I'll ask you to follow Ms. Smallman to the jury room  
22 so that you can retrieve your belongings, and then you are free  
23 to go even if you're not formally excused.

24 I'll ask the rest of you to remain where you are while  
25 Ms. Smallman does that. Unfortunately, given the distance of

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1 the jury room from the courtroom, it will take a few more  
2 minutes than it normally does in pre-Covid times, but bear with  
3 us and we'll get you off to the jury room in short order.

4 In the meantime, I'll take care of some business.  
5 I'll ask the court security officer who will secure the jury's  
6 deliberations to step forward so that I can administer the  
7 oath.

8 (Court security officer sworn)

9 THE COURT: Thank you very much.

10 While we wait, let me give you some scheduling,  
11 logistical-type information.

12 I mentioned to you yesterday that we would provide you  
13 with lunch order forms. I understand that you've all completed  
14 that. I've directed that lunch be delivered to the jury room  
15 at approximately 12:15. I leave it up to you whether you want  
16 to eat at that time or some other time. It's up to you. I  
17 also leave it up to you to decide whether you want to  
18 deliberate during your lunch or take a break from your  
19 deliberations.

20 One thing I want to stress is that you should not  
21 deliberate -- you may not deliberate -- unless all 12 of you  
22 are participating and there. So if somebody decides, for  
23 example, to go off on their own to eat lunch, you should cease  
24 your deliberations. Bottom line is, hopefully, you can all  
25 decide those sorts of issues yourselves.

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1 I mentioned that we'll be ending today either when you  
2 reach a verdict or 3:00, whichever is earlier. If you have not  
3 reached a verdict, you should anticipate that I will bring you  
4 back to the courtroom a couple minutes before three just so  
5 that I can give you some instructions before everyone leaves  
6 for the weekend. But otherwise, we will await word from you.

7 I've already told you if you have any questions or  
8 communications, you should send those to us by note, written,  
9 signed by your foreperson.

10 With that, please remain where you are, and as soon as  
11 Ms. Smallman gives me the word, I will send you off to the jury  
12 room to begin your deliberations.

13 A minute or two after you get there, we will provide  
14 the physical exhibits to you, and I mentioned already that my  
15 staff will show you how to use the computer systems to access  
16 the documentary exhibits, which will be available  
17 electronically. So, with that, please wait patiently and we  
18 will send you on your way in a moment.

19 All right. Ms. Smallman is back already. Wonderful.

20 I'll have Ms. Smallman give the official verdict form  
21 to juror No. 1.

22 She already has, apparently. Terrific.

23 And with that, ladies and gentlemen, you are formally  
24 excused to begin your deliberations. As I said, in a minute or  
25 two, we will bring the physical exhibits to you, and

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1 Ms. Smallman or someone else will show you how to use the  
2 computer system.

3 Good luck, and you may retire to deliberate at this  
4 time.

5 Thank you.

6 (At 10:40 a.m., the jury retired to deliberate upon a  
7 verdict).

8 THE COURT: You may be seated.

9 All right. First, I would ask the government to just  
10 begin going through the transcript and I think making  
11 redactions of the things that you think would need to be  
12 redacted in the event that the jury were to request any  
13 portions of the transcript. I think I've started doing that  
14 because when there are requests it just speeds the process  
15 along, I think. So if you can make a preliminary determination  
16 and then when we need to, you can share it with Mr. Schulte,  
17 that would be ideal and I think will save some time in the  
18 event that we get any such requests. If you're able to show it  
19 to Mr. Schulte before the request, all the better, but at least  
20 begin the process.

21 If you can give the physical exhibits to my law clerk,  
22 we'll get those down to the jury. Do we have them?

23 All right. Anything to discuss?

24 From the government.

25 MR. DENTON: No, your Honor.

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1 THE COURT: From Mr. Schulte.

2 MR. SCHULTE: No.

3 THE COURT: All right. In that case, I assume that  
4 most, if not all, of you are not going very far. In my  
5 experience, it's not unusual that we'll get a note relatively  
6 quickly, even if it's about something fairly easily for us to  
7 settle. For that reason in particular, I won't ask that you  
8 remain in the courtroom, but don't go very far. Certainly  
9 Mr. Schulte is not going very far, but everyone else, if you  
10 can just make sure that we have your cell phone numbers and  
11 that you are relatively close so that if we get a note and we  
12 need to summon you, you can be back relatively quickly, that  
13 would be ideal. So if we don't already have your cell phone  
14 numbers, please make sure that you give them to my law clerk.

15 And with that, I will see you whenever I see you.

16 I guess -- sorry -- before I step down, if we don't  
17 get a note by 2:45, please be here at 2:45. As you heard, my  
18 plan is to bring the jury in to excuse them for the weekend.  
19 So if you're here at 2:45, we'll get them up just a couple  
20 minutes before three.

21 Any questions?

22 MR. DENTON: No, your Honor.

23 MR. SCHULTE: No.

24 THE COURT: All right. See you when I see you.

25 Thank you. (Recess pending verdict)

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## A F T E R N O O N   S E S S I O N

2:00 p.m.

THE COURT: All right. Good afternoon. Welcome back.

As I think you may know, we have actually received two notes, one of which was non-substantive so I didn't convene everyone. But, today, at 12:22 p.m. we received a note: "We, request a black marker for charting." Signed by the -- well, by one of the jurors, I presume the foreperson.

And then today, dated today at 1:00 p.m. received a second note stating: "The jury requests transcript of witness no. 3, Leedom testimony." Signed by the foreperson. I hesitated on the first one because the signature appears different on the two so I don't know what to make of that. But, in any event, that's what I have received. I will mark them Court Exhibits 1 and 2. Eventually we will docket them.

I took the liberty of sending a marker in in response to their first note and did not, as I said, bother to convene everyone for that purpose.

I gather that the government has provided to Mr. Schulte a proposed redaction of Mr. Leedom's testimony. I quickly looked through it and it looked good to me but Mr. Schulte, have you had a chance to review it?

MR. SCHULTE: I have. I had two requested modifications.

THE COURT: OK.



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1 MR. SCHULTE: The first is on page 1019, lines 4  
2 through 5. I think that just completes the redactions already  
3 there.

4 THE COURT: All right. I actually caught the line 4  
5 one myself. I think that's correct, as long as we haven't  
6 printed it, we may as well add the remainder of 4 and 5.

7 Any objection?

8 MR. DENTON: No. That's fine, your Honor.

9 THE COURT: And second?

10 MR. SCHULTE: The second one is on page 983, and the  
11 government redacted 7 and 8 but the question and answer already  
12 came in before the objection and there was no move to strike so  
13 I think that's in evidence.

14 THE COURT: Well, I think since I sustained the  
15 objection, the implicit direction to the jury is to disregard  
16 the answer so I disagree.

17 Mr. Denton?

18 MR. DENTON: We agree, your Honor.

19 THE COURT: So I think that's right with the  
20 modification to 1019 I think we are good to go.

21 Ms. Cooper, are you on top of this? If you can modify  
22 1019, apply the redactions and then e-mail it to Ms. Smallman,  
23 I think we can at least quickly load it on to the jury's system  
24 and we will notify them, I think we should probably print a few  
25 copies as well, just to give them maximum flexibility.

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1           While that is happening, one other question for you;  
2 speaking with Mr. Hartenstine, whether we need a CISO present  
3 next week should the jury's deliberations continue. Given it  
4 is 2:08, I think it is likely. I am curious of your views. He  
5 and I spoke and I think the only scenario in which I see the  
6 need to have any sort of classified hearing is if there is a  
7 jury note with respect to one or the other of the two  
8 classified exhibits. That strikes me as a very low probability  
9 but not impossible. Mr. Hartenstine said in the event we did  
10 need to hold a classified hearing, it is ideal that a CISO  
11 would be present but we could proceed even in the absence of  
12 one.

13           So, given that, I think it is probably OK to take our  
14 chances and proceed without one, though he may decide to send  
15 someone anyway but curious to hear your thoughts or if you have  
16 any reason, aside from what I have thought about, to have  
17 someone present.

18           Mr. Denton?

19           MR. DENTON: Your Honor, I think as far as a hearing  
20 goes, we agree. In the unlikely event that we need to do  
21 something on short notice, everyone involved has been through  
22 this enough times now that we can manage that process without  
23 having someone physically here.

24           The only other possibility that comes to mind is  
25 whether they need any sort of, I guess, technical assistance

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1 with either of the two classified exhibits. I don't see any  
2 reason why that's not something that the Court or the Court's  
3 staff could handle and it wouldn't necessarily have to be a  
4 CISO to deal with that. That's just the only other possibility  
5 that occurs to us.

6 THE COURT: Mr. Schulte?

7 MR. SCHULTE: I don't take a position one way or the  
8 other. Whatever you think is best.

9 THE COURT: So I will talk to Mr. Hartenstine and we  
10 will decide, but my guess is we can probably take our chances  
11 and spare them more time in New York if they're eager to be  
12 spared of New York.

13 I think what I would propose to do is actually write a  
14 short note to the jury explaining that we got their note, that  
15 we have loaded the testimony on their system, and that we are  
16 also printing copies but, in the meantime, it is immediately  
17 available to them.

18 Any objection to my doing that?

19 MR. DENTON: No, your Honor.

20 MR. SCHULTE: No.

21 THE COURT: Great. So give me a moment, I will draft  
22 something, I will read it to you, and then we will proceed.

23 In the meantime, Ms. Cooper, you can let us know when  
24 you have accomplished your tasks?

25 MR. DENTON: Your Honor, how many hard copies of the

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1 testimony would you like to send back?

2 THE COURT: I don't have a strong view. Why don't we  
3 say six.

4 MR. DENTON: Nice round number.

5 (pause)

6 MR. LOCKARD: The revised redaction has been emailed  
7 and Ms. Smallman should have it shortly.

8 (pause)

9 THE COURT: Here is what I would propose, a note that  
10 says the following with today's date on my letterhead:

11 To the members of the jury: We received your note  
12 requesting the testimony of Mr. Leedom. We have uploaded a  
13 copy of the transcript (redacted to remove anything that is not  
14 evidence) on the electronic system. We are in the process of  
15 making six physical copies of the transcript for you as well.  
16 Thank you, Judge Furman.

17 Any objection to that?

18 MR. DENTON: Not from the government, your Honor.

19 THE COURT: Mr. Schulte?

20 MR. SCHULTE: I think that's fine. I think maybe just  
21 adding something that if they want more paper copies they  
22 should just request that.

23 THE COURT: I think that is implicit. I don't want to  
24 suggest to them that they should. They know they can always  
25 ask for anything, really, so I will leave it at that.

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1 I think I will add a line: Thank you for your  
2 patience. So that they know we are trying.

3 The government will get the six copies to us as soon  
4 as possible, if you can before 2:45, obviously, and if not, we  
5 will have them for when the jury begins on Monday.

6 Anything to discuss before we adjourn until later in  
7 the hour?

8 MR. DENTON: No, your Honor.

9 THE COURT: Mr. Schulte?

10 MR. SCHULTE: No.

11 THE COURT: All right. So, again, be back in the  
12 courtroom in half an hour and I will see you shortly  
13 thereafter.

14 Thanks.

15 (recess pending verdict)

16 THE COURT: It is 2:54. Anything to discuss before we  
17 bring the jury up and excuse them for the weekend?

18 MR. DENTON: Not from the government, your Honor.

19 MR. SCHULTE: No.

20 THE COURT: While we do that let me say, if you  
21 haven't already, I would continue the process of redacting the  
22 rest of the transcript. I regret not saying earlier today that  
23 I would begin with Leedom, I sort of had a sense that that  
24 would be the most likely portion that they would request. On  
25 the same principle, I might continue with Berger. But, in any

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1 event, given that you have the weekend I would think that the  
2 government can probably finish the entirety of the transcript  
3 and give it to Mr. Schulte first thing on Monday morning so  
4 that we are ready to provide them with anything else that they  
5 request.

6 Good?

7 MR. DENTON: Will do, your Honor.

8 THE COURT: Terrific. All right. We will get the  
9 jury and go from there.

10 Just so you know, my practice and plan is to tell them  
11 that they don't need to appear here Monday morning, that they  
12 can report directly to the jury room, and once all 12 are  
13 present then they can resume their deliberations. So, for that  
14 reason, you don't need to be here at 9:00 a.m. as well, as long  
15 as you are relatively close by and we know how to reach you,  
16 then that should suffice.

17 All right? Good.

18 (pause)

19 THE DEPUTY CLERK: Jury entering.

20 (Jury present)

21 THE COURT: You may be seated.

22 Welcome back, ladies and gentlemen. It is now 3:00 on  
23 the dot so, as promised, I brought you back to let you go for  
24 the weekend. Let me give you some instructions.

25 First -- and I don't know how to rank the foremost but

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1 certainly up there in importance -- don't discuss the case.  
2 All right? Don't discuss the case with anyone, and that  
3 includes with each other, subject to what I will say in a  
4 moment. That is to ensure that you continue to keep an open  
5 mind, it is to ensure that you don't get exposed to anything  
6 beyond the evidence in this case. The bottom line is for all  
7 the same reasons that I have told you throughout the case. So  
8 over the weekend, again I hope you are seeing friends and  
9 family. Regardless, whatever the temptations may be don't talk  
10 about the case. All right? You may say that you are serving  
11 as a juror in a criminal case. Don't even say that you have  
12 reached the point of your deliberations. Don't say anything  
13 beyond that. All right? Don't discuss the case, at all.

14           You also shouldn't discuss the case with one another  
15 until Monday when all 12 of you are present. I told you  
16 earlier that you may not deliberate about the case, you may not  
17 discuss the case unless you are deliberating, and in order to  
18 deliberate that requires all 12 of you. So, for that reason,  
19 you shouldn't discuss the case with one another either in the  
20 event that you see each other either outside the courtroom or  
21 when you are waiting for your fellow jurors on Monday morning;  
22 wait until all 12 of you are there.

23           So don't discuss the case, don't talk about the case,  
24 don't communicate about the case, don't do any research about  
25 the case or anyone involved in it. All of those rules continue

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1 to apply and you should certainly continue to keep an open mind  
2 since it is important to hear from your fellow jurors and  
3 deliberate as a selective whole.

4 On Monday you will resume your deliberations Monday,  
5 beginning hopefully by 9:00. To that end, please be in the  
6 jury room by 8:45. You do not need to come here to resume your  
7 deliberations. As long as all 12 of you are present, then you  
8 may resume your deliberations so you should go directly to the  
9 jury room.

10 What I would like you to do is at 9:00 confirm to the  
11 Court Security Officer, who is securing your deliberations,  
12 that all 12 of you are present, and also provide the Court  
13 Security Officer with your lunch order forms since we will get  
14 those in and get lunch delivered to you probably around the  
15 same time so you can plan accordingly. But, I will not make  
16 you come to the courtroom before you resume your deliberations,  
17 you can do that as soon as all 12 of you are present, but I  
18 stress that you should not do so until all 12 of you are  
19 present.

20 I think that is all I need to tell you. Ms. Smallman  
21 is nodding her head which means I am doing well. With that, I  
22 wish you a restful, good, and enjoyable weekend. I will bring  
23 you up to the courtroom either when we receive another note  
24 from you on Monday, if you have another note, or at the end of  
25 the day, which will be 5:00 on Monday. So, again, if you



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1 haven't reached a verdict or you don't have a note that would  
2 lead me to bring you to the courtroom, I will bring you up at  
3 the end of the day.

4 I should say, we received your two notes earlier, one  
5 requesting a marker, the other requesting Mr. Leedom's  
6 testimony. We gave you the marker; hopefully you are satisfied  
7 on that front. Obviously, if there is anything else of that  
8 sort that you need, let us know. And, at this point I  
9 understand that you have received Mr. Leedom's testimony both  
10 in electronic form on the system in the jury room and also some  
11 additional copies for you as well. Hopefully that satisfies  
12 your requests on that score.

13 So, with that, I wish you a wonderful, relaxing rest  
14 of the weekend and we will see you at some point on Monday, and  
15 again, please be in the jury room 8:45, there should be  
16 breakfast for you, and when all 12 of you are present, give  
17 those forms to the CSO -- the Court Security Officer -- and you  
18 may resume your deliberations.

19 Thank you very much and have a wonderful weekend.

20 (Jury not present)

21 THE COURT: You may be seated.

22 Anything anyone needs to discuss?

23 MR. DENTON: No, your Honor.

24 MR. SCHULTE: No.

25 THE COURT: All right. I wish everybody a relaxing,

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1 restful weekend as well and I will see you at some point on  
2 Monday. As noted, you don't need to be here at 9:00 but make  
3 sure you are nearby and reachable. Have a wonderful weekend.

4 Thank you.

5 (Adjourned to July 11, 2022, at 9:00 a.m.)  
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